

**BEFORE THE COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
MONTGOMERY COUNTY, MARYLAND**

Michael Tyler  
21213 Owls Nest Circle  
Germantown, Maryland 20876

Complainant

vs.

Case No. 564-0

Brookfield at Milestone Condominium  
c/o ComSource Management, Inc.  
16 Executive Park Court  
Germantown, MD 20874

Respondent

**DECISION AND ORDER**

The above entitled case came before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on October 9, 2002 pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, and the duly appointed hearing Panel considered the testimony and evidence of record, and finds, determines and orders as follows:

**BACKGROUND**

This is a complaint filed by a unit owner in a condominium on March 25, 2002. The condominium passed a rule (Rule No.101) which assigned all non-garage townhouses two parking spaces and garage townhouses no spaces in the parking area which is a part of the general common elements of the condominium. The unit owner contests the condominium's authority to assign parking spaces in a manner which deprives garage townhouses, such as his, of any assigned parking in the general common elements.

The parties filed a Joint Stipulation of Facts which was admitted into the record as Commission's Exhibit No. 2 and is attached hereto as Attachment 1. In addition to those stipulated facts, the panel makes the following findings of fact.

### **FINDINGS OF FACT**

1. The Complainant Michael Tyler is a unit owner in Brookfield at Milestone Condominium, a Maryland Condominium.

2. Brookfield at Milestone Condominium is a Maryland condominium organized and operating under the Maryland Condominium Act.

3. Article III, Section 2(k) of the By-laws of Brookfield provides that the powers of the Board of Directors shall include:

“(k) Controlling the use of all Common Elements, including but not limited to, designating parking spaces thereon for use by Unit Owners and/or their guests.”

4. Article X, Parking Spaces, of the Brookfield By-laws provides in part:

“Any parking spaces not designated as a part of a Unit or as a Limited Common Element appurtenant to any Unit by the Declaration, these By-laws or on the Condominium Plat are part of the General Common Elements of the Condominium and are hereby unassigned and designated for general use, to be used on a “first come, first served” basis. Subject to applicable law, the Board of Directors may assign all or any portion of these parking spaces as “reserved” for the exclusive use of designated Unit Owners.”

5. Complainant contends that the assignment of parking spaces in the general common elements of the condominium under Rule No. 101 constitutes a reallocation of his interest in the general common elements in that it deprives him of the use of parking spaces in the general common elements except for the 11 overflow spaces. He has no assigned spaces in the general common elements under Rule No. 101.

6. According to a letter from Robert Kronenberg, RLA, Development Review Division, Plan Enforcement, Montgomery County, Department of Park and Planning, Maryland National Park and Planning Commission, the calculation of parking spaces for Brookfield at Milestone Condominium was done on the basis of two spaces per unit. For the garage townhouse units, two spaces were assigned on the basis of one in the garage and one on the driveway. Parking for non-garage units was provided in front of the units and in nearby parking bays. This assignment of parking spaces was followed in Parking Rule No. 101.

### **CONCLUSIONS OF LAW**

1. The review of the condominium's actions in a case such as this requires first an assessment of whether the condominium had the authority to act, and second, if it did then whether its actions were reasonable. Black vs. Fox Hills, 90 Md App 75, 599 A.2d 1228 (1992); Kirkley vs. Seipelt, 212 Md 127, 128 A.2d 430 (1957). The By-laws for Brookfield, Article III, Section 2(k) give the Board of Directors the authority to designate parking spaces for use by unit owners and/or their guests. Article X of the By-laws allows the Board of Directors to assign all or any portion of parking spaces as reserved for the exclusive use of designated unit owners.

2. Section 11-103(c)(i), Real Property Article, Annotated Code of Maryland, prohibits an amendment to the declaration which changes the undivided percentage interest in the common elements without the written consent of every unit owner and mortgagee. Section 11-103(c)(iv) prohibits the redesignation of general common elements as limited common elements also without the written consent of every unit owner and mortgagee unless permitted by the Declaration.

3. Under Section 11-108 of the Real Property Article, the common elements of a condominium are subject to mutual rights of support access use and enjoyment by all unit owners

“except as provided in the declaration”. In Ridgely Condominium Association, Inc. vs. Smyrnioudis, 343 Md. 357, 681 A.2d 494 (1996) the Court of Appeals of Maryland held that a condominium’s by-law amendment revoking the right of commercial unit owners to have their clients use the lobby affected an interest in property which required consent of all owners. The court found that such amendment was not merely a use restriction which the Council of Unit Owners could enact by amending the by-laws. In the present case, the provision allowing reserved parking is found not in the declaration but in the by-laws of the condominium. That provision is expressly “subject to applicable law”. By-laws Article X. The effect of Rule No. 101 is to deprive certain unit owners of the use of parts of the general common elements which, before the enactment of that rule, they had the right to use.

4. The By-laws of Brookfield are part of the Declaration of Condominium, attached to the Declaration as Exhibit A. They are the original By-laws filed when the Condominium was created. Thus Article X of the By-laws was present, and recorded in the Land Records of Montgomery County as a part of the documents creating the condominium before any units were sold. In Sea Watch Stores vs. Unit Owners of Sea Watch Condominium 115 Md. App. 5, 691 A.2d 750 (1997) the Court of Special Appeals of Maryland made the distinction between restrictions created in documents as part of the “governance of the condominium” and restrictions subsequently created by amendments to those documents. Since the By-laws in this case were created as “part of the governance of the condominium”, and they are identified as Exhibit A to the Declaration, they should be read together with the Declaration and both the Declaration and the By-laws should be reconciled and enforced accordingly. Dulaney Towers Maintenance vs. O’Brey, 46 Md. App. 464, 418 A.2d 1233 (1980).

5. The authority to assign reserved parking spaces is therefore part of the original recorded documents of the condominium or as stated in Sea Watch supra, part of the governance of the condominium. As a consequence the authority exists to adopt rules assigning parking spaces to designated unit owners.

6. Rule No. 101 follows the Montgomery County Zoning Ordinance. It provides for parking for all members of the condominium, taking into account that those with garaged units have two spaces, their driveway and the garage, and those without garages have none. The requirements of the zoning ordinance however do not control the rights of condominium unit owners to use the general common elements which they own as tenants in common with other unit owners.

7. Because the authority to assign reserved parking spaces is part of the original documents of the condominium, or as stated in Sea Watch supra, part of the governance of the condominium, the Board of Directors of Brookfield at Milestone Condominium has the authority to assign reserved parking which to some extent may infringe upon the rights of unit owners to free use and access to all of the general common element parking spaces, (125 spaces). However, Rule No. 101 does not assign any spaces to the Complainant. The panel concludes that the authority in Article X of the By-laws to “assign all or any portion of these parking spaces as ‘reserved’ for the exclusive use of designated Unit Owners” does not include the authority to deprive any unit owner, whether or not the unit owner owns a garage unit, of any assigned space whatsoever in the general common elements. The Complainant concedes that the condominium may assign parking in the general common elements, but argues that that assignment must include some assignment of spaces to all unit owners. By necessity, this means that the garage unit owners must receive at least one

space, since it is not possible to assign anything less than a whole space. The panel concludes therefore that Rule No. 101 is beyond the authority of the Board of Directors in that it assigns no spaces to the garage units in the general common elements. In effect, Rule No. 101 assigns to the garage unit owners spaces which they already have. However, Article X allows the condominium to assign only those spaces in the general common elements and not spaces which are either limited common elements or part of a unit. Any assignment of spaces in the general common elements must include an assignment of some spaces, which means at least one space, to each garage unit owner. The Complainant has not challenged, and in fact has conceded the fairness of a system whereby a garage unit owner would be assigned one space in the general common elements and be left to park on his driveway, a limited common element, or in his garage, a part of the unit. In fact this argument is embodied in Proposal No. 2 contained in the record at R-125. Complainant specifically conceded that Proposal No. 2 is permissible under the condominium's documents. That proposal gives garage units only one assigned space in the general common elements.


**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law it is this 29<sup>th</sup> day of October, 2003

**ORDERED:**

1. Rule No. 101 is invalid and beyond the authority of the condominium to enact.
2. The posture of the rights to parking in the general common elements condominium, considering the invalidity of Rule No. 101 is that there is presently no assigned/designated parking in the general common elements. This does not mean that the condominium may not adopt a rule consistent with this order and the procedures of the Maryland Condominium Act in the future.

The decision of the Panel is unanimous. Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days after the date of entry of this Order in accordance with the Maryland Rules of Procedure.

  
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John F. McCabe, Jr., Panel Chair  
Commission on Common Ownership Communities

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Case No.: 564-O

**JOINT STIPULATION OF FACTS**

The Brookfield at Milestone Condominium (hereinafter the "Condominium") is a town house condominium community located in Germantown, Maryland. The Condominium was created in 1997 and is governed by the Declaration of Condominium and By-Laws for the Milestone Townhouse Condominium dated September 23, 1997, and recorded at Liber 15181, folio 357, et seq, among the Land Records for Montgomery County, Maryland.

The Condominium consists of 88 units, and common elements. There are 31 units with a garage and 57 units without a garage. The units are otherwise identical.



The garage units include a garage, which contains 228 square feet of usable space, and a driveway, which is a limited common element reserved for the exclusive use of the adjacent Unit.

There are currently 123 parking spaces on the common areas in the Condominium, including two handicapped spaces. When the Site Plan for the Condominium was approved by the Montgomery County Planning Boards, the number of spaces in the community was calculated in accordance with the formula set forth in the letter prepared by Robert Kronenberg, Park and Planning Staff Member, dated November 2, 2001.

After management was turned over to the members by the developer, Beazer Homes, an owner controlled Board was elected in June of 2000 and immediately began working on establishing a parking policy. In October of 2000 the Board held an open meeting to discuss a proposed parking policy under which two spaces would be assigned to the non-garage unit owners and the driveway and garage assigned to each garage unit owner. This met with strong opposition from the garage unit owners and several alternative suggestions were received from the community.

On October 18, 2000, a parking committee was formed, after which several meetings were held and various suggestions for parking policies received.

On December 6, 2000, the Board met with the parking committee and reviewed four potential parking policies presented by the committee.

On January 22, 2001, the Board held an open meeting to discuss a parking policy. During this meeting the Board adopted a policy to restrict parking to residents only, and to assign

two hang tags to residents, which hang tags had to be displayed in any vehicles parked on Condominium common property.

In June of 2001, the two hang tag policy went into effect and was enforced by the Board. The Board began receiving complaints from non-garage unit owners who felt that garage unit owners were given preferential treatment since they could park four vehicles in the community (driveway, garage, and two hang tags) and the non-garage unit owners could only park two.

In July of 2001, surveys were sent to the community asking how the current two-tag policy was working and requesting further suggestions. The Board received 34 responses to the survey and concluded that problems still existed, and that the two-tag system was unfair.

In August of 2001, the Board President, Jennifer Smith, conducted a final walk through of the community with the builder, Beazer Homes. Following this walk through, Ms. Smith contacted Robert Kronenberg, the Staff Member at the Maryland National Capital Park and Planning Commission who is responsible for site plan enforcement, regarding parking problems in the community. Thereafter, Mr. Kronenberg wrote a letter dated November 2, 2001, which outlined how the parking spaces in the community were counted when the community was approved. In his letter, Mr. Kronenberg also stated that the Planning Commission has no authority to enforce how spaces are being used within the community.

In December of 2001, the Board decided to reconsider the two-tag parking policy and to consider the current policy under which the garage and driveway are assigned to each garage unit and two spaces on the common areas are assigned to each non-garage unit. A letter was sent to the community discussing this policy and various comments received in response.

On February 12, 2002, a letter was sent to the membership advising them that the Board would be holding an open meeting on March 13, 2002 to approve Parking Rule 101, which is the policy at issue in this case. At this meeting on March 13, 2002 comments were received from the community and the rule was unanimously adopted by the Board, but was not considered as an amendment to the Declaration or By-laws by all unit owners. The Board believed it had authority to adopt this rule, pursuant to existing language in the governing documents for the condominium.

On March 25, 2002, a petition was received by the Board signed by 24 unit owners requesting that a special meeting be held to overturn the Board's decision to adopt Parking Rule 101.

On May 20, 2002, the Board held a special meeting to consider the petition to overturn Parking Rule 101. Sixty-four members voted at the meeting, with 44 units in favor of the rule and 23 units voting against it. Those voting against the rule did not obtain the number of votes required under Article V, Section 15(c) of the By-laws for Milestone Townhouse to reject the rule. Again, however, Parking Rule 101 was not considered as an amendment to the Declaration or the By-laws because the Board believed it had the authority to adopt this rule, pursuant to existing language in the governing documents for the condominium.

The Board has continued to investigate construction of additional overflow parking on the common areas of the Condominium, but has suspended its efforts pending the outcome of this dispute.

This dispute was filed by Michael Tyler and his wife, garage unit owners in the Condominium. Mr. Tyler claims that Parking Rule 101 permanently assigns two parking spaces to the non-garage unit owners and no parking spaces to the garage unit owners, which they claim constitutes a permanent taking of the common elements.